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PROCEDURES AND MECHANISMS RELATING TO COMPLIANCE UNDER THE KYOTO PROTOCOL

Text proposed by the Co-Chairmen of the Joint Working Group on Compliance

I. INTRODUCTION

A. Mandate

1. At the thirteenth sessions of the subsidiary bodies, the Joint Working Group on Compliance (JWG) requested the Co-Chairmen, with the assistance of the secretariat, to further develop the text on procedures and mechanisms on compliance under the Kyoto Protocol, to serve as the basis for negotiations, along with inputs from Parties, at the second part of the thirteenth sessions of the subsidiary bodies (FCCC/SBI/2000/10, annex III).

B. Scope of the note

2. In order to fulfil their mandate, the Co-Chairmen have drawn on the views expressed at the first part of the thirteenth sessions as well as at informal consultations held in New Delhi, India from 12 to 14 October 2000. In view of the number of issues that remain to be resolved, and the limited time available, the document has been developed by the Co-Chairmen to facilitate and advance negotiations at the second part of the thirteenth sessions.

C. Possible action by the Joint Working Group

3. Parties are invited to use the text presented in this note as the basis of their negotiations at the second part of the thirteenth sessions of the subsidiary bodies. The JWG should fulfil its mandate set out in decision 8/CP.4 and provide a report on its findings to the Conference of the Parties to adopt a decision on procedures and mechanisms on compliance under the Kyoto Protocol at its sixth session.

II. TEXT

PROCEDURES AND MECHANISMS ON COMPLIANCE UNDER THE KYOTO PROTOCOL

Section I. General provisions

Objective

1. The objective of the procedures and mechanisms on compliance is to facilitate, promote and enforce compliance with the commitments under the Protocol, as specified in the following provisions [, and in accordance with the principles of the Convention].

[Principles

Option 1

2. The operation of the procedures and mechanisms on compliance shall be guided by the principles set out in Article 3 of the Convention, and shall:

(a) Be proportionate, in that the procedures, mechanisms and consequences should take into account the cause, type, degree and frequency of non-compliance;

(b) Adhere to the principle of common but differentiated responsibilities as defined in the Convention;

(c) Treat all Parties that have undertaken the same commitments in an equal manner;

(d) Be based on principles of efficiency and due process allowing Parties, and in particular the Party concerned, an opportunity for a full, fair and timely consideration and resolution of compliance-related issues;

(e) Provide for reasonable certainty; prevention of non-compliance; importance of domestic compliance and enforcement; creating appropriate incentives to comply; restoration to the environment of excess tonnes; automaticity; and transparency.

Option 2

3. *Principles governing the operation of the procedures and mechanisms on compliance should not be expressly provided for in the text, as they are contained in the Convention and the Protocol and could be implicit from the content of the text, or be reflected in a preamble or in a decision accompanying the adoption of the procedures and mechanisms on compliance.]*

Section II. Establishment and structure

Compliance Committee

1. The Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (COP/MOP) hereby establishes a Compliance Committee (hereinafter referred to as the "Committee") [pursuant to Article 18[1] of the Protocol].

2. The Committee shall function through [a plenary, and] two branches, namely, the facilitative branch and the enforcement branch.

3. The Committee shall consist of [15] [...] members, elected by the COP/MOP [based on equitable geographical representation of the five regional groups, and taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau].

4. There shall be an equal number of alternate members, elected by the COP/MOP on the same basis as members of the Committee.

5. Members of the Committee and their alternates shall be nominated by the Parties and shall serve in their personal capacity. Members shall have recognized competence relating to climate change and in relevant fields such as the scientific, technical, socio-economic or legal fields.

6. The Committee shall appoint a bureau consisting of [two] [...] members, [one] [...] to be chosen from the facilitative branch and [one] [...] from the enforcement branch.

7. The facilitative branch and the enforcement branch shall interact and cooperate in their functioning and, as necessary, on a case-by-case basis, the [plenary] [bureau] may designate one or more members of one branch to contribute to the work of the other branch on a non-voting basis.

Facilitative branch

Membership

8. The facilitative branch shall consist of [10] [...] members of the Committee elected by the COP/MOP on the basis of [equitable geographical representation of the five UN regional

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[1] All articles referred to in this text are those of the Kyoto Protocol

groups, taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau], [five] [...] of whom shall be elected at the first session of the COP/MOP, for a term of two years, and [five] [...]for a term of four years. Every two years thereafter, the COP/MOP shall elect [five] [...] new members for a term of four years. Outgoing members may be re-elected for one consecutive term.

9. The membership of the facilitative branch shall reflect in a balanced manner the competence in the fields referred to in paragraph 5 of this section.

Mandate

Option 1

10. The facilitative branch shall be responsible for providing advice and facilitation to all Parties in implementing the Protocol and for promoting the compliance of [Annex I] Parties with their commitments under the Protocol, as set out in section IV, paragraphs 1 to 4.

[11. Taking into account the differentiated responsibilities of Annex I and non-Annex I Parties, the facilitative branch shall, with regard to non-Annex I Parties, apply the consequences set out in section IV, paragraphs 1 to 4, and with respect to Annex I Parties the consequences set out in section IV, paragraphs ... to ....]

[12. The facilitative branch shall not apply the consequences set out in section IV, paragraphs ... to ....]

Option 2

13. The facilitative branch shall be responsible for promoting compliance [and] [by] providing advice and facilitation concerning individual Parties' implementation of commitments in and under the Protocol, as set out in section IV, paragraphs 1 to 4.

Procedures to be followed

14. The facilitative branch shall follow the procedure set out in section III, paragraphs 14 to 24.

15. [The multilateral consultative process referred to in Article 16 of the Protocol may be designated to perform the responsibilities of the facilitative branch.] [The facilitative branch shall constitute the multilateral consultative process referred to in Article 16 of the Protocol.]

Enforcement branch

Membership

16. The enforcement branch shall consist of [five] [...] members of the Committee elected by the COP/MOP on the basis of [equitable geographical representation of the five regional groups,

taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau] [[one half from among Annex I Parties and one half from among non-Annex I Parties] [a larger representation from Annex I Parties] [on the basis of equitable geographical representation of the relevant regional groups]]. The COP/MOP shall, at its first session, elect [two] [...] members for a term of two years and [three] [...] members for a term of four years. Every two years thereafter, the COP/MOP shall alternately elect [two] [...] or [three] [...] new members, as appropriate, for a term of four years. Outgoing members may be re-elected for one consecutive term.

17. The [majority of the] members of the enforcement branch shall have legal experience.

Mandate

18. The enforcement branch shall be responsible for determining whether:

(a) A[n Annex I] Party is in non-compliance with [Article 3.1] [, Articles 2 and 3];

[(b) A[n Annex I] Party is in non-compliance with Article 3.14];

(c) A[n Annex I] Party is in non-compliance with Article 5.1 and/or Article 7.1, [7.2] and 7.3;

(d) In the event of a disagreement, to apply adjustments to inventories under Articles 5.2 and 7.4;

(e) A[n Annex I] Party is or is not meeting any eligibility requirement of [Annex I] Parties under Articles 6, [12] and/or 17.

19. The enforcement branch shall also be responsible for applying the consequences set out in section IV, paragraphs .... to ....

Procedures to be followed

20. The enforcement branch shall follow the procedures set out in section III, paragraphs 25 to 40.

21. [The proceedings of the enforcement branch shall apply to Annex I Parties only.] [The coverage of the enforcement branch shall be based on the nature of commitments, not on Party status.]

[22. In applying the consequences set out in section IV, a certain degree of flexibility shall be allowed by the enforcement branch to the Parties included in Annex I undergoing the process of transition to a market economy.]

Section III. Procedures

Submission of questions of implementation

1. The Committee may receive questions of implementation indicated in a report of the expert review teams under Article 8, or submitted by:

(a) Any Party with respect to itself; or

(b) Any Party with respect to another Party, supported by corroborating information [, with respect to the facilitative branch only].

2. Submissions under subparagraph 1 (b) of this section shall be made available by the secretariat to the Party concerned, within [...] weeks of the receipt by the Committee of a question of implementation.

3. In addition to the reports referred to in paragraph 1 of this section, the Committee shall also receive all other final reports of the expert review teams. The Committee shall notify the secretariat that it is not proceeding with any questions of implementation in relation to any of these final reports.

Reports of expert review teams

Option 1

4. Pursuant to Article 8.3 of the Protocol, the reports of expert review teams shall be considered by a panel of the COP/MOP with a view to ascertaining that the reports are in accordance with the guidelines to be established by the COP/MOP.

5. The panel shall consist of [...] members elected annually by the COP/MOP on the basis of [equitable geographical representation of the five regional groups, taking into account the interest groups as reflected by the current practice in the UNFCCC Bureau]. It shall meet as necessary during the inter-sessional period of the COP/MOP, and shall be presided over by [...].

6. The panel shall consider the report of the expert review teams at its first session after transmittal of the report to the COP/MOP, and shall act expeditiously in every case.

7. The panel shall inform the Committee in writing of the results of its consideration of the report of the expert review team. It shall ensure, and not hinder, consideration of the report by the Committee at the earliest possible time.

Option 2

No such provision is needed.

Preliminary procedures

Allocation

8. The [bureau] [plenary] shall allocate questions of implementation to the appropriate branch in accordance with the responsibilities of each branch set out in section II, paragraphs 10 to 13 and 18 to 19.

Preliminary examination

9. The [relevant branch] [plenary] shall, [in accordance with agreed criteria adopted by the COP/MOP], make a preliminary examination of questions to ensure that, except in the case of a question raised by a Party concerning itself, the question before it:

(a) Is supported by sufficient information; and

(b) Is not *de minimis* or ill-founded, based on the requirements of the Protocol and the rules made pursuant to the Protocol.

10. The preliminary examination of a question shall be completed within [...] weeks.

11. After the preliminary examination of a question, the Party concerned shall be notified in writing and, in the event of a decision to proceed, shall be provided with a statement identifying the question of implementation, the information on which the question is based, and the branch that will consider the question.

12. Within [...] weeks after the receipt of the notification by the Party concerned under paragraph 11 of this section, the Party concerned shall be given an opportunity to comment on all information relevant to the question and the decision to proceed.

Procedures for further handling of questions

13. The following procedure shall apply to [the plenary,] the facilitative branch and the enforcement branch, except where otherwise provided in respect of the enforcement branch.

Participation of Parties

14. The Party concerned shall be entitled to designate one or more persons to represent it during the consideration of the question. The Party concerned shall participate in the deliberations but not in the elaboration and adoption of a recommendation or decision of the branch.

[Avoidance of conflict of interest

15. No member of a branch who is [a national of] [nominated by] a Party that is involved in a question before the branch shall participate in the proceedings relating to that question.]

Sources of information

16. The branch shall base its deliberations on information provided by:

(a) Reports of the expert review teams under Article 8 of the Protocol;

(b) The Party or Parties concerned;

(c) Reports of the Conference of the Parties (COP), the COP/MOP, and the subsidiary bodies;

(d) The other branch.

17. Inter-governmental and non-governmental organizations with relevant factual and technical information may submit such information to the branch.

18. Any information utilized by the branch shall be made available to the Party concerned and, subject to any rules relating to confidentiality, to the public.

Recommendations and decisions

19. The adoption of recommendations and decisions shall require a quorum of [...].

20. The members of [the plenary and] the branches shall make every effort to reach agreement on any recommendations or decisions by consensus. If all efforts at reaching consensus have been exhausted, the recommendations or decisions shall as a last resort be adopted by a majority of at least [three quarters] of the members of [the plenary or] the branch present and voting.

21. The Party shall be given an opportunity to comment on any recommendation or decision of the branch.

22. The branch shall forthwith notify the Party concerned in writing of its recommendation or decision, with conclusions and reasons therefor, and shall make copies available to all other Parties and to the public.

Translation of documents

23. Any question of implementation submitted under paragraph 1 of this section, any notification under paragraph 11 of this section, and any recommendation or decision of the relevant branch shall be translated into one of the United Nations official languages, if requested by the Party concerned.

Rules of procedure

24. The Committee may further develop rules of procedure for the branches, including rules on confidentiality, consistent with these procedures, for adoption by the COP/MOP.

Procedures pertaining to the enforcement branch

Written submission

25. Within [....] weeks after the receipt of the notification under paragraph 11 of this section and not less than [....] weeks before the branch is scheduled to consider the question of implementation, the Party concerned may make a written submission to the enforcement branch, including rebuttal of information submitted to the branch.

Hearing

26. If so requested in writing by the Party concerned within [....] weeks of the notification, the enforcement branch shall hold a hearing at which the Party concerned shall have the opportunity to present its views. The Party concerned may present expert testimony or opinion at the hearing. Such a hearing shall be held in public unless the branch decides that part or all of the hearing shall take place in private.

27. The enforcement branch may put questions to and seek clarification from the Party concerned, either in the course of such a hearing or at any time in writing, and the Party concerned may provide a response within [....] weeks thereafter.

Reference to the facilitative branch

28. The enforcement branch may, at any time, where appropriate, refer a question to the facilitative branch for consideration.

Preliminary finding

29. Within [....] weeks from receipt of the Party's written submission under paragraph 25 of this section, or within [....] weeks from the date of any hearing pursuant to paragraph 26 of this section, or within [....] weeks from the notification under paragraph 11 of this section if the Party has not provided a written submission, whichever is the latest, the enforcement branch shall:

(a) Make and issue a preliminary finding that the Party concerned is in breach of a commitment under the articles referred to in section II, paragraphs 18 to 19;

(b) Otherwise determine not to proceed further with the question.

30. The preliminary finding or the decision not to proceed shall include conclusions and reasons therefor.

31. The enforcement branch shall forthwith notify the Party concerned in writing of its preliminary finding or decision not to proceed. The decision not to proceed shall be communicated to other Parties and to the public.

Final decision

32. Within [...] weeks from the receipt of the notification of the preliminary finding, the Party concerned may provide a further written submission. If that Party does not do so within that period of time, the enforcement branch shall issue a final decision confirming its preliminary finding.

33. If the Party concerned provides a further written submission, the branch shall, within [...] weeks from the date it received the further submission, consider it and make a final decision, indicating whether the preliminary finding is confirmed, and, if so, which part.

34. The final decision shall include conclusions and reasons therefor.

35. The enforcement branch shall forthwith notify in writing the Party concerned of its final decision and communicate it to the other Parties and to the public.

Expedited procedure

36. Where a question relates to eligibility requirements of Annex I Parties under Articles 6, [12] or 17, including adjustments related to the observance of eligibility requirements, paragraphs 25 to 35 of this section shall apply, except that:

(a) The preliminary examination referred to in paragraph 9 of this section shall be conducted within [one] week;

(b) The branch shall issue its preliminary finding or decision not to proceed within [six] weeks of being informed in writing of a question of implementation;

(c) The Party concerned may make a written submission within [four] weeks after receipt of the notification referred to in paragraph 31 of this section;

(d) The branch shall issue its final decision within [two] [...] weeks of receiving any submission referred to in paragraph 32 of this section.

37. Where a Party's eligibility has been suspended under Articles 6, [12] or 17, and if the Party concerned requires the enforcement branch to reinstate its eligibility, the enforcement branch shall decide on such requests as soon as possible.

38. In the event of a disagreement whether to apply an adjustment to inventories under section II, paragraph 18 (d), the enforcement branch shall decide the matter within [...] weeks of being informed in writing of such a disagreement. In doing so, the enforcement branch may draw on any technical expertise it deems appropriate.

Adoption of decisions

39. The adoption of decisions of the enforcement branch shall require a quorum of [...].

40. The members of the enforcement branch shall make every effort to reach agreement on decisions by consensus. If all efforts at reaching consensus have been exhausted, the decisions shall as a last resort be adopted by a majority of at least [three quarters] of the members of the branch present and voting.

Appeal

Option 1

41. The Party concerned may appeal against a decision of the enforcement branch [involving consequences relating to its non-compliance with [Article 3.1] [Articles 2 and 3] [and Article 4.1] [or against a decision that a Party does not meet the eligibility requirements for one or more of the mechanisms set out under Articles 6, [12] and 17].

42. An appeal may be made to [the COP/MOP] [an appellate body consisting of three members who are recognized authorities in relevant fields]. The COP/MOP may agree by [consensus, except that the Party concerned may not participate in the decision with respect to itself] [[...] majority] to override a decision made by the [enforcement branch] [appellate body] on issues set out in paragraph 41 of this section.

43. The working procedure for appeals may be developed by the COP/MOP.

Option 2

There should be no procedure for appeal.

COP/MOP

44. The Committee shall report on all its activities to each ordinary session of the COP/MOP.

[45. The COP/MOP shall consider the reports of the Committee on the progress of its work, and provide general policy guidance, including on any issues regarding implementation that may have implications for the work of the subsidiary bodies.]

Additional period for fulfilling commitments

46. For the purpose of fulfilling its commitment under Article 3.1 a Party may, until [[one] month after the date set by the COP/MOP for the completion of the expert review process for the last year of the commitment period] [[36] months after the end of the commitment period]:

(a) Continue to acquire [and transfer] emissions reduction units (ERUs), [certified emissions reduction (CERs)] and part of assigned amount (PAAs) under Articles 6, [12] and 17

from the preceding commitment period, provided it has not been found ineligible to participate in the relevant mechanism under these Articles; or

[(b) Make a voluntary payment into a climate change fund or funds].

Section IV. Consequences

Facilitative branch

Option 1

1. The facilitative branch shall, with regard to non-Annex I Parties, depending upon the particular question before it, decide upon one or more of the following consequences:

(a) Provision of advice and assistance to individual Parties regarding the implementation of the Protocol;

(b) Facilitation of financial and technical assistance, including technology transfer and capacity-building, taking into account the provisions of Article 4.7 of the Convention and the relevant decisions of the COP.

2. The facilitative branch shall, with regard to Annex I Parties, depending on the particular question before it and taking into account the cause, type, degree and frequency of the non-compliance, decide upon one or more of the following consequences:

(a) Provision of advice and assistance to individual Parties regarding the implementation of the Protocol;

(b) Making recommendations to the Party concerned;

(c) Publication of non-compliance [or potential non-compliance];

(d) Issuing of cautions;

(e) Initiation by the facilitative branch of the enforcement procedure set out in section III.

Option 2

3. The facilitative branch shall, depending upon the particular question before it, decide upon one or more consequences, *inter alia*:

(a) Provision of advice and facilitation of assistance to individual Parties regarding the implementation of the Protocol;

(b) Facilitation of financial and technical assistance, including technology transfer and capacity-building;

[(c) Making recommendations];

(d) Publication of non-compliance or [potential non-compliance];

[(e) Issuing of cautions;]

Option 3

4. The facilitative branch may, as appropriate:

(a) Recommend an indicative list of organizations with expertise that may assist a Party in its implementation of the Protocol;

(b) Arrange for individuals from the roster of experts to advise on and participate in measures to assist a Party in the implementation of its commitments and/or to help it return to compliance;

(c) Mediate in a Party's efforts to approach relevant international organizations for assistance, including financial assistance;

(d) Facilitate and mediate a Party's easier access to and acquisition of technology appropriate to the implementation of its commitments.

Enforcement branch

[5. [The consequences set out in paragraphs ... to ... of this section shall apply to Annex I Parties only.] [Consequences shall apply based on the commitment involved, not based on Party status.]]

6. [Where appropriate, the enforcement branch [may refer the application of any consequence to the facilitative branch,] [or may itself apply one or more of the consequences set out in paragraphs 1 to 4 of this section].]

Articles 5 and 7

[7. Where the enforcement branch has determined that [a Party is not in compliance with Articles 5 or 7.1.[7.2], 7.3,] [the inventory of a Party has been adjusted by [... per cent]], it [may] [shall] apply one or more of the following consequences, taking into account the cause, type, degree and frequency of that Party's non-compliance:

[(a) Declaration of non-compliance;]

(b) The Party concerned shall, within three months of the determination of the enforcement branch, develop and commit itself to an "Articles 5 and 7 plan" to be approved by the enforcement branch, which shall include, *inter alia*:

(i) An analysis of the causes of the Party's non-compliance ;

(ii) Measures that the Party intends to implement in order to remedy the non-compliance;

(iii) A timetable for implementing such measures within a time-frame not exceeding [x] months, including clear benchmarks for measuring regular progress in their implementation;

The Party concerned shall submit to the enforcement branch progress reports on the implementation of the Articles 5 and 7 plan on a [quarterly] [regular] basis. On the basis of the progress report, the enforcement branch may decide on further measures, as appropriate;

(c) Suspension of rights and privileges of the Party concerned under terms to be specified by the enforcement branch.]

Articles 6, 12 and 17

7. Where the enforcement branch has determined that a Party does not meet an eligibility requirement under Articles 6, [12] or 17, it shall suspend that Party's eligibility [and the eligibility of other Parties operating under an Article 4 agreement] under the article in question, until the enforcement branch has decided to reinstate such Party's eligibility.

Article 3.1

8. Where the enforcement branch has determined that a Party, following the period referred to in section III, paragraph 41, is not in compliance with Article 3.1, it shall [apply] [request the Party to choose] [one or more of] the following consequences [taking into account the cause, type, degree and frequency of that Party's non-compliance]:

(a) [Recommendation by the enforcement branch to the Party concerned of policies and measures for implementation [taking into account Articles 2.3 and 3.14]];

(b) [Publication of the Party's non-compliance];

(c) [Deduction of [1.3][1.x][x] times the [number of] excess tonnes from the Party's assigned amount for the commitment period following the period for which the non-compliance with Article 3.1 occurred];

(d) [Acquisition of units of assigned amount originating in the commitment period under consideration [at a rate of 1.1] or originating in the subsequent commitment period [at a rate of 1.3], or a combination thereof, provided that in each case the proportion of units that

exceed the amount needed to meet the Party's commitment under Article 3.1 shall be transferred to the relevant fund to be established under the clean development mechanism (CDM) for its use for adaptation purposes.];

(e) [Payments by the Party concerned into a compliance fund, in accordance with paragraphs 10 to 14 of this section;]

(f) [Restriction on transferring [and acquiring] under Articles [3] [4] [6] [12] [17] [above a level and for a period of time to be determined by the enforcement branch] [until the Party has demonstrated to the enforcement branch that it will have a surplus of assigned amount in the subsequent commitment period]];

(g) [Development of a compliance action plan, in accordance with paragraphs 15 to 21 of this section] [taking into account Articles 2.3 and 3.14];

(h) [Financial penalty;]

(i) [Suspension of rights and privileges;]

[Compliance fund

10. The Party concerned [shall] [may] make payments at a rate to be determined by the enforcement branch that shall be no more than [...] into a compliance fund to be established by the Party.

11. Each such compliance fund shall be administered by an appropriate body nominated by the Party concerned, the details of which shall be notified by the Party to the enforcement branch.

12. The body administering the compliance fund shall use the income and any interest earned:

(a) To acquire, at a reasonable rate that shall not be higher than [...] parts of assigned amount originating in the commitment period in which the non-compliance occurred, or, if no such parts of assigned amount are available;

(b) To reduce anthropogenic emissions of greenhouse gases [or enhance anthropogenic removals by sinks] on one or more domestic and/or international projects. Such projects shall, within [three] months of the date of the determination of non-compliance by the enforcement branch, be submitted by the Party to the [enforcement branch] [appropriate body under paragraph 11 of this section] for its approval which shall take into account the short and medium-term environmental benefits as well as their cost-effectiveness.

13. The parts of assigned amount acquired by the compliance fund or the excess emissions restored by such projects shall not be double-counted towards the Party's compliance with its

quantified emission limitation reduction commitments during the commitment period in which the compliance fund is in operation.

14. The Party shall submit to the enforcement branch a progress report on the operation and the results of the fund annually, no later than 15 April, as well as audited accounts. On the basis of that report and the accounts, the enforcement branch may decide upon one or more of the consequences set out in section IV, paragraphs 1 to 4, and/or apply another consequence set out in section IV, paragraph 8.]

Compliance action plan

15. [The Party concerned shall restore [1.x times] the excess emissions.]

16. [The Party concerned shall, within [...] months after the determination of non-compliance, develop and submit to the enforcement branch for its [approval] [advice] a compliance action plan setting out how it proposes to restore [[1.x][x] times] the excess emissions, [which [may] include]:

(a) An analysis of the causes for the Party's non-compliance ;

(b) [[Domestic policies and measures] [one or more means, including for example [domestic measures (such as non-allocation of tonnes under a domestic cap-and-trading system);] [use of Articles 6, 12 and/or 17;] [use of a voluntary compliance fund in accordance with paragraph X;]] by which it proposes to restore [[1.x][x] times] the excess emissions, and an analysis of their expected impact on the Party's greenhouse gas emissions];

(c) [A declaration not to make transfers under Article 3.11, paragraph 11 [for the duration of the implementation of the compliance action plan][until the Party has demonstrated to the enforcement branch that it will have a surplus of assigned amount in the subsequent commitment period]];

(d) [Detailed information on the economic dimension of the implementation of any action under subparagraph (b) above] ;

(e) [A timetable for implementing the action under subparagraph (b) within a time-frame not exceeding [three] years, including [clear benchmarks] for measuring annual progress in the implementation];

(f) [An assessment of the compatibility of the compliance action plan with the strategy developed by the Party [and, in the case of a Party in an Article 4 agreement, developed by the Parties under that agreement] to comply with its obligations during the commitment period in which the compliance action plan is implemented];

(g) [An assessment of whether or not the compliance action plan complies with Articles 2.3 and 3.14].

17. [Units of assigned amount originating in the first commitment period shall be applied toward restoring excess emissions at a rate of [ ]].

18. [The enforcement branch shall [review] [advice on] the compliance action plan to ensure that it is [complete and] [reasonably] calculated to restore [[1.x][x] times] the excess emissions [and if so, approve it]].

19. [The excess emissions restored under the compliance action plan may not be double-counted toward the Party's compliance with its quantified emission limitation or reduction commitment during the commitment period in which the compliance action plan is implemented].

20. [The Party concerned shall submit a progress report on the implementation of the compliance action plan to the enforcement branch annually no later than [...]].

21. [On the basis of that progress report, the enforcement branch [may decide upon one or more of the consequences related to facilitation set out in paragraphs 1 to 4 and/or apply another consequences set out in paragraph 8 of this section.] [shall determine whether the requisite tonnes have been restored]. In the case where the enforcement branch determines [within a specific time-frame], that some or all of the requisite tonnes have not been restored, it shall deduct the remaining tonnes from the Party's assigned amount for the commitment period following the period for which the non-compliance with Article 3.1 occurred.]

[Articles 2 and 3]

[Article 3.14]

[Application of Article 4.5 and 4.6

22. If at the end of the commitment period one or more Parties operating under Article 4 are found not to be in compliance with Articles 5 and 7, each Party to an agreement under Article 4 shall be responsible for its own level of emissions set out in the agreement.

23. In accordance with Article 4.6, any non-compliance consequences under this paragraph shall apply to both the regional economic integration organization and any Party that has exceeded its level of emissions as notified in accordance with Article 4.

24. Where Article 4.5 applies, the Parties operating under such agreement shall not be able to operate under an Article 4 agreement with respect to the commitment period following the period for which the non-compliance with Article 3.1 occurred; and Annex B commitments shall apply.

25. Where Article 4.5 applies, another Party operating under that Article 4 agreement shall be able to carry over the assigned amount under Article 3.13 only to the extent that the difference between its emissions and its assigned amount under Article 3 is greater than the amount by

which the non-complying Parties under Article 4 have exceeded their respective levels of emissions.

26. Where Article 4.5 applies, a Party operating under that agreement shall not be entitled to add units of assigned amount originating in any other Party, whether gained under the agreement itself, under any other agreement or under Articles 3.3, 3.4, 6, 12 or 17, in meeting its own level of emissions set out in the agreement.]

Section V. Other provisions

Secretariat

1. The secretariat shall perform the following functions:

(a) Channel information to the Committee;

(b) Service the meetings of the Committee;

(c) Act as the channel of communication with other Protocol bodies.

Relationship with Article 16

2. [The multilateral consultative process under Article 16 shall provide advice and facilitate assistance [to non-Annex I Parties] with respect to issues relating to their compliance with the Protocol.]

Relationship with Article 19

3. The Committee shall operate [without prejudice to] [independent of] Article 19 of the Protocol [and decisions under Article 12].

[Evolution] [Amendment]

Option 1

4. [Subject to Article 18,] the procedures and mechanisms on compliance may be modified by consensus of the Parties to the Protocol, taking into account any amendment to the Protocol, decisions of the COP/MOP and experience gained with the working of the process.]

Option 2

5. [The procedures and mechanisms on compliance shall be amended in accordance with Article 20 of the Protocol.]

Adoption of procedures and mechanisms on compliance

Option 1

6. The COP recommends that the COP/MOP, at its first session, adopt a decision on the procedures and mechanisms on compliance.

Option 2

7. The COP recommends that the COP/MOP, at its first session, adopt the procedures and mechanisms on compliance, applicable with immediate effect on a politically binding and interim basis.

8. The COP/MOP further recommends that the COP/MOP1, at its first session, adopt an identical text in a legally binding form by amendment of the Protocol.

Option 3

9. The COP decides, [at its sixth session] [before entry into force of the Protocol], to adopt an agreement on procedures and mechanisms on compliance to be an integral part of the Protocol, and to enter into force at the same time as the Protocol. Such an agreement may contain a final clause to provide for tacit adherence through signature by Parties that have already ratified the Protocol, and for affirmative adherence by other Parties.

Option 4

10. The COP recommends that the COP/MOP, at its first session, adopt a decision on procedures and mechanisms on compliance.

11. The COP further decides to recommend that the COP/MOP include in the amendment establishing the second commitment period the procedures and mechanisms on compliance, including legally binding consequences that would be applicable to the first commitment period.

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The Hague, 13-18 November 2000
Agenda items 3 and 4

IMPLEMENTATION OF ARTICLE 4.8 AND 4.9 OF THE CONVENTION (DECISION 3/CP.3 AND ARTICLES 2.3 AND 3.14 OF THE KYOTO PROTOCOL)

MATTERS RELATING TO ARTICLE 3.14 OF THE KYOTO PROTOCOL

Note by the chairmen of the subsidiary bodies

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Annex

Draft elements of a work programme relating to Article 4.9 of the Convention as well as other obligations under the Convention and the Kyoto Protocol 8

I. MANDATE

1. The subsidiary bodies, at their thirteenth sessions, invited their chairmen, with the assistance of the secretariat, to convene inter-sessional consultations on these two agenda items (FCCC/SBI/2000/10, para. 12 (b)). The chairmen of the subsidiary bodies requested Mr. Mohammad Reza Salamat (Islamic Republic of Iran), and Mr. Bo Kjellén (Sweden), to conduct these informal consultations, which were held from Thursday, 19 October 2000 to Saturday, 21 October 2000, at Geneva.

II. SCOPE

2. The current document, containing the report on the informal consultations, reflects the main views that were presented at the consultations. The purpose was to advance understanding and clarify positions on key issues raised in the negotiating text on these two items (contained in document FCCC/SBI/2000/10/Add.1), and to explore possibilities for resolving outstanding issues at the sixth session of the Conference of the Parties (COP).

3. The informal character of the discussions greatly helped in achieving these objectives, thereby preparing the ground for the negotiations in the contact group at the resumed thirteenth sessions of the subsidiary bodies.

4. The report is presented as a means of facilitating negotiation. It does not in any way constitute a negotiating text, nor does it prejudge the outcome of the negotiations at the resumed sessions.

III. REPORT ON INFORMAL CONSULTATIONS

A. Implementation of Article 4.9 of the Convention

5. The representative of Vanuatu, on behalf of the group of least developed countries (LDCs), briefed the meeting on the workshop on the special situations and the specific needs and concerns of the least developed countries in the context of the climate change negotiations at COP 6, which was held in Geneva on 16 and 17 October 2000, and presented a document (see annex below) containing draft elements of a work programme relating to Article 4.9 of the Convention as well as other obligations under the Convention and the Kyoto Protocol. He indicated that a textual submission would be provided by the group at the second part of the thirteenth sessions of the subsidiary bodies, to replace the current text on LDCs (section C, paragraph 11 of the negotiating text as contained in FCCC/SBI/2000/10/Add.1).

6. There was general support for these draft elements, and for the need for a "fast track" in addressing the specific needs and concerns of the LDCs. Participants noted that some areas of vulnerability in LDCs were similar to those in other developing countries, but that the LDCs should receive special treatment none the less in the implementation of support programmes to address their specific needs and concerns because of their limited adaptive capacity.

7. A number of LDC representatives noted that their funding needs should be met through new avenues, with fewer institutional complexities, lower overheads and smaller bureaucratic

hurdles. They noted that, based on their experience, the current financial mechanism and its implementing agencies were not in a position to respond to their urgent needs in an adequate and timely manner.

8. Some participants noted that some elements (such as those related to debt reduction and concessional loans) lie beyond the scope of the climate change negotiations, but that these could still be communicated to the relevant agencies in donor countries. Similarly, issues which have relevance to other agenda items at COP 6 would be raised under discussions on those items as well.

9. Some participants felt that more clarification was necessary on how the proposal by LDCs to formulate national adaptation plans of action (NAPAs) would fit into the context of preparation of national communications. In this light it was suggested that such plans of action could be viewed as a complement to national communications until the LDCs have developed sufficient capacity to prepare their national communications. The plans of action would also help raise the priority of climate change issues at the national level in LDCs. In this context it was also pointed out that only five LDCs had been able to submit their national communications to date.

10. Participants from Annex II Parties indicated that they would communicate the LDC proposals to the relevant officials in their capitals and come back with a response to these proposals at COP 6.

11. It was proposed that COP 6 send a message on the special situations and the specific needs and concerns of the LDCs arising from the adverse effects of climate change, to the Third United Nations Conference on the Least Developed Countries, to be held in Brussels in May 2001.

B. Adverse effects of climate change under Article 4.8 of the Convention

12. On issues related to reporting, participants acknowledged the importance of national communications, particularly in the long term, for communicating the specific needs and concerns of developing country Parties, while in view of practical difficulties, some level of flexibility in submitting information was deemed important by a number of non-Annex I countries. It was suggested that if reports other than national communications were to be used, these could be considered as an interim channel pending the preparation of national communications. In this way the national communication process would not be weakened.

13. Some participants from developing countries expressed the need for a strong commitment to be included in the chapeau of paragraph 7 of the negotiating text (FCCC/SBI/2000/10/Add.1), whether through the existing financial mechanism or through alternative means of funding. Other participants from developed countries mentioned that this chapeau would have to be general if the list of activities were to be comprehensive, to allow donor countries to be able to prioritize areas for their support (menu approach); on the other hand, if the chapeau were to be specific, binding donors to provide support to all activities, then the list would need to be revisited in order to ensure that all activities could indeed be provided for. It was also indicated that even having a specific chapeau will not imply that each Annex II Party would provide funding for all activities listed in paragraph 7. Some participants mentioned that the chapeau should not contain a binding commitment, since the language of the Convention, under Article

4.8, stipulates that "Parties shall give full *consideration* to what actions are necessary" (emphasis added).

14. While many participants from developing countries, particularly the least developed countries, outlined the need for establishing new means for the provision of financial resources, other participants indicated that such new funding could create additional problems and redundancy, and preferred streamlining the existing resources (through the Global Environment Facility (GEF) and official development assistance). One participant from an Annex II Party proposed that a parallel process could be adopted, whereby the COP would provide concrete guidance to the financial mechanism for supporting certain activities, while at the same time encouraging Annex II Parties to provide some additional support through other channels, including official development assistance.

15. It was noted that any output from the contact group on the implementation of Article 4.8 and 4.9 of the Convention, and on matters relating to Article 3.14 of the Kyoto Protocol, pertaining to guidance to the financial mechanism would be forwarded to the relevant contact group once agreement had been reached.

C. Impact of the implementation of response measures under Article 4.8 of the Convention

16. Reference was made to the Solemn Declaration of the Second Summit of Heads of State and Government of OPEC Member Countries held in Caracas, Venezuela (on 27 and 28 September 2000); in particular its statements on seeking channels of dialogue between oil producers and consumers, and on economic diversification, both of which were considered to have a positive bearing on discussions on the impact of response measures. In this respect, reference was also made to the Seventh International Energy Forum to be held in Riyadh, Saudi Arabia, from 17 to 19 November 2000. Some participants noted the importance of the discussions on energy which would take place in the context of the ninth session of the Commission on Sustainable Development in 2001, to which a message could be forwarded by COP 6.

17. Some participants re-emphasized the need for any actions to be based on a rigorous assessment and quantification of impacts of response measures, while others noted that uncertainties also existed in other issues under negotiation, and even in the science of climate change itself.

18. The issue of compensation was discussed. A number of participants felt that a broad definition for compensation could be adopted, encompassing a general provision for funding, which could also cover economic diversification and technological development. Others opposed the concept of compensation altogether, as they rejected any implied or explicit liability for adopting response measures to climate change, stating particularly that it would involve compensating some high-income developing countries, and would constitute a disincentive to implementing measures to address climate change, thus undermining the ultimate objective of the Convention.

19. Participants noted that some of the proposals included under section B of the negotiating text (p. 11) contained win-win solutions, which could help address the adverse effects of climate change as well as the impact of the implementation of response measures.

20. It was recalled that the proposal by the Group of 77 and China regarding paragraphs 18 to 20 (originally part of a proposal by the Alliance of Small Island States), involves retaining the chapeau of paragraph 18, but deleting subparagraphs (a) to (c), as well as paragraphs 19 and 20. Other participants mentioned that they preferred the alternative text under paragraph 17, since it satisfied the requirement of establishing a chain of causality and the burden of responsibility for addressing the impact of response measures. Some participants from developing countries noted that the current proposals under paragraph 17 included additional obligations relating to reporting for developing countries, which would require additional resources and capacity that did not currently exist.

21. One participant noted that the most prudent way to address this issue was to cover it through technology transfer and support for economic diversification in developing countries.

D. Matters relating to Article 3.14 of the Kyoto Protocol

22. It was noted that, in refining the negotiating text, elements related to reporting under Articles 7 and 8 of the Kyoto Protocol needed to be incorporated.

23. Views expressed during discussions on the impact of the implementation of response measures under Article 4.8 of the Convention, particularly regarding compensation and methodological requirements, were reiterated under Article 3.14 of the Protocol.

24. One participant noted that countries with economies in transition would encounter difficulties in complying with some of the proposed commitments of Annex I Parties, particularly in relation to the reduction and phasing-out of market imperfections, and to discouraging the local production of fossil fuels.

25. It was recalled that paragraph 9 of the negotiating text had been proposed by the Group of 77 and China. Some participants from non-Annex I Parties noted that paragraph 9 of the negotiating text contained win-win proposals, incorporating environmentally sound actions which would help minimize the impact of response measures while at the same time contributing to the ultimate objective of the Convention. One participant from an Annex I Party noted that as an alternative approach, the objective should be to minimize the impact of the implementation of response measures, and not to prescribe specific policies and measures. In light of this suggested approach, participants from developing countries invited Annex I Parties to provide an alternative proposal for action in this respect.

E. Further multilateral work

26. The co-chairs of the informal consultations presented a compilation of the workshops suggested in the negotiating text. Many participants indicated that the prioritization of workshops should be guided by the prioritization of actions to implement Articles 4.8 and 4.9 of the Convention and 3.14 of the Kyoto Protocol. Others noted that this prioritization should not be linked to the availability of funding. Most participants agreed that any workshop for the least developed countries should be given the highest priority, and some suggested that such a workshop could serve as a forum for the first meeting of the proposed LDC expert group.

27. Participants recommended that the Third Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), which would be available in 2001, insofar as its findings relate

to the implementation of Article 4.8 and 4.9 of the Convention and Article 3.14 of the Kyoto Protocol, should serve as input to some of the proposed workshops.

28. Many participants agreed that the issue of insurance, both in relation to the adverse effects of climate change and to the impact of response measures, should also be given high priority in planning for upcoming workshops.

29. Some participants were of the view that the proposed workshop on economic diversification was of high priority, particularly for LDCs, and that it should cover all sectors of the economy. It was also proposed that this workshop be conducted prior to COP 7, and that it should include an elaboration of the policies and measures which Annex I Parties intend to adopt in meeting their commitments under the Kyoto Protocol.

Annex[1]

WORKSHOP ON THE SPECIAL SITUATIONS, AND SPECIFIC NEEDS AND CONCERNS OF THE LEAST DEVELOPED COUNTRIES, WITHIN THE CONTEXT OF THE CLIMATE CHANGE NEGOTIATIONS AT COP 6

Draft elements of a work programme relating to Article 4.9 of the Convention as well as other obligations under the Convention and the Kyoto Protocol

Particular Funding and Technology Requirements for LDCs in Relation to Climate Change

The following represents a preliminary consideration of funding requirements and elements of a work programme for LDCs in relation to Climate Change. In considering this work programme, particular financial considerations should be provided to create the enabling environment for effective participation of LDCs in climate change related matters. These considerations relate to funding sources and debt management.

Special Support for National Adaptation Programme of Action for LDCs

A special need of LDCs is the establishment of a process to develop National Adaptation Programmes of Action (NAPA). The purpose of these NAPAs is to enable LDCs to have a channel to communicate their vulnerabilities and their adaptation needs, given that not all LDCs have the capacity to prepare and submit national communications in the foreseeable future. Technical assistance in the preparation of NAPAs would be provided by the establishment of LDC-Expert Groups.

Possible Funding Approaches

Recognising the particular vulnerabilities of LDCs to climate change impacts, special multilateral and bilateral funding opportunities should be provided for LDCs. These special funding considerations can be considered under the following categories, in a timely process:

- **LDC Climate Change Institutional Development Fund**

  A special LDC Climate Change Trust Fund should be created under the management of the UNFCCC Secretariat. This fund would help LDCs develop effective, local climate change institutions through the provision of information technology (computer, telecommunications and networking equipment), as well as language teaching and negotiation skills to allow LDCs to participate more effectively in climate change negotiations. This Fund would also provide special financial assistance to meet the funding and technology transfer requirements of LDCs in responding to obligations under the Convention and Kyoto Protocol.

- **LDC Climate Change Adaptation Fund**

  Following the establishment of the LDC Climate Change Institutional Development Fund, LDCs would seek funding from various funding sources to establish a LDC Climate Change Adaptation Fund. This fund would provide ongoing support to assist LDCs implement their NAPAs.

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[1] The text of this annex is reproduced without formal editing by the secretariat.

- **Concessional Loan Facility**

  Highly concessional loans should be provided to build the appropriate infrastructure and capacity to allow LDCs to prepare and adapt to the impacts of climate change. These loans should not worsen the debt burden of LDCs and hence should have very low interest rates and long repayment periods.

- **Disaster Management Fund**

  Recognising that the LDCs have a limited capacity to respond to climate related disasters, a special Disaster Management Fund should be established.

- **Adaptation Surcharge Exemption**

  In order to encourage a greater flow of CDM projects to the LDCs and to overcome some of the inherent institutional disadvantages, CDM projects in LDCs should be exempt from an adaptation surcharge.

- **Special Consideration in Adaptation Funding**

  Notwithstanding the special surcharge consideration for LDCs, LDCs should be given priority consideration in the allocation of adaptation funding.

- **Debt Management**

  Special consideration should be given to canceling debts in LDCs, as the repayment and servicing of these debts cripple the opportunities to finance institutional and other activities related to climate change.

Participation in the Convention and Kyoto Protocol

Further to these financial considerations there are particular needs in relation to LDC participation in the processes associated with the UN Framework Convention on Climate Change and the Kyoto Protocol. Creating the appropriate enabling environment for LDCs to participate in the Clean Development Mechanism is a key issue. This consideration is represented in the following table.

	Areas identified for funding	Technology needs
Participation in the Kyoto Process, in particular the Clean Development Mechanism	To enhance LDC capacity to build the appropriate investment environment for attracting CDM projects.	Provide technology and technical assistance to LDCs to undertake the appropriate baseline calculations and project proposals for participation in the CDM.

Funding and Technology Transfer Requirement for LDCs in relation to Climate Change

Proper participation of LDCs in the UN Framework on Convention on Climate Change and the Kyoto Protocol are contingent on the appropriate financial assistance and transfer of technology. Furthermore, LDCs need special consideration in adapting and responding to the impacts of climate change. These special needs and considerations are represented in the following table.

	Areas identified for funding	Technology needs
Water Resources	• Water management and harvesting • Water resource allocation management • Water storage management • Water catchment management • Waste management	• Provide technologies and technical assistance for better distribution of water and better water storage • Provide energy efficient desalination and water purification technologies • Develop systems of information exchange on appropriate systems for human and domestic animal waste management • Provide appropriate technical assistance and technology to monitor water quality
Food Security	• Agricultural systems (including livestock and fisheries management) that are better adapted to climate change • Effective food storage and processing	• Develop technologies and technical assistance for improving sustainability of agriculture systems and maintaining productivity in adverse climatic situations • Develop technologies and technical assistance to improve food storage and processing
Human Health	• Medical expertise to manage climate related health effects, e.g. spread of insect borne diseases, diseases associated with water contamination. • Public awareness programmes	• Provide basic medical technologies and technical assistance for managing climate related health effects • Provide technical support for public awareness programmes

	Areas identified for funding	Technology needs
Energy Management	• Management of renewable energy and energy efficiency systems • Appropriate hydro-energy production • Enhancing the efficient use of fuelwood energy	• Provide viable and affordable renewable energy and energy efficiency systems • Provide appropriate hydro-energy systems • Improve indigenous renewable energy technologies • Provide technologies and technical assistance in efficient fuelwood usage for energy
Climate Change prediction, severe weather forecasting and risk management	• Climate change prediction • Severe weather forecasting • Monitoring risks • Communicating weather forecasting and risks • Data analysis	• Provide technology in climate change prediction • Provide improved meteorological equipment • Provide early-warning communications equipment • Develop regional centres in risk management • Develop communication systems on climate prediction and risk management • Provide technology for better data analysis
Impacts on Coastal zones and Low Lying Islands	• Managing the coastal zone • Monitoring health of coral reefs • Management and protection of coral reef ecosystems • Managing sand dune erosion	• Develop appropriate coastal management systems • Provide technologies and technical assistance to monitor health of coral reefs • Provide technology for the management and protection of coral reef ecosystems

	Areas identified for funding	Technology needs
Impacts on Fragile mountain ecosystems	• Flood Control • Irrigation water management • Developing appropriate hydro-energy production • Fragile mountain ecosystem management	• Provide technologies and technical assistance in disaster management • Provide technologies and technical assistance in flood control • Provide technologies and technical assistance in irrigation water management
Impacts on arid and semi arid ecosystems	• Fire management • Arid vegetation management and desertification control	• Build fire control systems • Provide technologies and technical assistance in arid vegetation management and desertification control
Impacts on wetland ecosystems	• Wetland management	• Provide technologies and technical assistance in wetland managment
Forest Management and Utilisation	• Sustainable forest management	• Provide technology and technical assistance in sustainable forest management
Infrastructure to respond to severe weather events	• Developing transport and communications infrastructure capable of coping with adverse climatic conditions or severe weather events.	• Provide appropriate transport and communications infrastructure capable of coping with adverse climatic conditions or severe weather events.
Legal and Institutional Frameworks	• Developing national legislation for climate change • Negotiating skills for participating in climate change negotiations • Participation in climate change processes, including the IPCC • Developing national environmental policy frameworks	• Provide technical assistance to develop national legislation associated with climate change • Provide technical assistance in the development of national environmental policy frameworks
Public Education and Awareness	• Strengthening public education and awareness of climate change related issues	• Provide technology and technical assistance to help in providing public education and awareness on climate change related issues

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